

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

STACY BUTLER,	:	
Plaintiff	:	3:15-cv-2395
	:	
v.	:	(Judge Mariani)
	:	
UNITED STATES OF AMERICA, <i>et al.</i> ,	:	
Defendants	:	

MEMORANDUM

I. Background

On December 14, 2015, Plaintiff, Stacy Butler, an inmate currently confined at the United States Penitentiary, Lewisburg, Pennsylvania, ("USP-Lewisburg"), initiated the instant action pursuant to 28 U.S.C. § 1331. (Doc. 1). Named as Defendants are the United States of America, and Dr. Rodwan Rajjoub. (*Id.*).

Presently before the Court is Plaintiff's motion for leave to amend his complaint. (Doc. 13). In support of the motion, Plaintiff states that "page (6) of the complaint was not complete and or ledgible [sic] ... [and] was not intended for admission in such condition." (*Id.* at p. 1). In the amended complaint, Plaintiff alleges that he underwent spinal surgery in 2008 when confined at the United States Penitentiary, Terre Haute, Indiana. (Doc. 13-1, p. 2). While housed at USP-Lewisburg, Plaintiff continued to experience back pain, and underwent x-rays, CT-scans, and MRIs. (*Id.*). In 2013, Plaintiff underwent another surgery performed by Dr. Rajjoub at the Williamsport Hospital. (*Id.*). Subsequent to the surgery,

Plaintiff alleges that he continued to suffer from pain, a “click” in his lower back, and temporary restricted mobility. (*Id.*). Plaintiff avers that he was not warned of the potential complications and pain associated with spinal surgery. (*Id.* at pp. 2-3).

For the reasons set forth below, Plaintiff’s motion for leave to amend will be granted.

II. Discussion

The filing of an Amended Complaint is governed by Federal Rule of Civil Procedure 15(a):

(1) *Amending as a Matter of Course*. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Other Amendments*. In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.

FED. R. CIV. P. 15(a). This Court’s Local Rules require that a proposed amended pleading accompany a motion. See Local Rule 15.1(a).

The United States Court of Appeals for the Third Circuit has adopted a liberal approach to the amendment of pleadings in order to ensure that “a particular claim will be decided on the merits rather than on technicalities.” *Dole v. Arco Chemical Co.*, 921 F.2d

484, 486-87 (3d Cir. 1990). Amendment, however, is not automatic. See *Dover Steel Co., Inc. v. Hartford Accident and Indem. Co.*, 151 F.R.D. 570, 574 (E.D. Pa. 1993). Leave to amend should be granted absent a showing of “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962); see also *Oran v. Stafford*, 226 F.3d 275, 291 (3d Cir. 2000). Futility of amendment occurs when the complaint, as amended, does not state a claim upon which relief can be granted. See *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997). If the proposed amendment “is frivolous or advances a claim or defense that is legally insufficient on its face, the court may deny leave to amend.” *Harrison Beverage Co. v. Dribeck Importers, Inc.*, 133 F.R.D. 463, 468 (D. N.J. 1990).

Based on the procedural history of this case, Plaintiff may file an amended complaint as a matter of course. Plaintiff’s original complaint was filed on December 14, 2015. (Doc. 1). By Order dated December 29, 2015, the Court directed service of the complaint. (Doc. 8). On January 6, 2016, Plaintiff filed a motion for leave to amend the complaint. (Doc. 13). Thus, the motion for leave to amend was filed within twenty-one (21) after service of the original complaint. See FED. R. CIV. P. 15(a)(1)(A). Upon review of the proposed pleading and, in light of Plaintiff’s *pro se* status, the proposed amended complaint will be accepted as

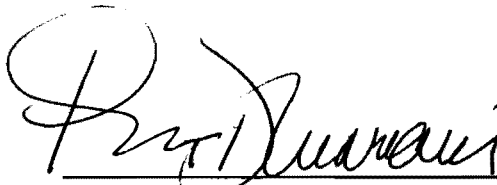
filed.

III. Conclusion

Based on the foregoing, Plaintiff's motion for leave to file an amended complaint will be granted and the action will proceed on the amended complaint as filed, (Doc. 13-1).

A separate order will issue.

Date: January 13, 2016



Robert D. Mariani
United States District Judge